

² Appellant appealed the September 9, 2020 decision of record in which OWCP affirmed its July 11, 2019 decision, in part, by denying appellant's claim for cervical radiculopathy causally related to a December 19, 2018 employment injury. The case record also contains a September 9, 2020 decision in which OWCP formally accepted appellant's claim for post-concussion syndrome. As this latter September 9, 2020 decision is not adverse to appellant, it is not subject to appeal. *See* 20 C.F.R. § 501.3(a).

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a cervical radiculopathy condition causally related to the accepted December 19, 2018 employment injury.

FACTUAL HISTORY

On December 19, 2018 appellant, then a 39-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injury when, in an attempt to separate two clerks during a physical altercation, she was punched on the top of her head and on her left ear while in the performance of duty. She asserted that she sustained bruises as a result of the alleged incident. Appellant stopped work on December 19, 2018. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was in the performance of duty at the time of the claimed injury.

Appellant submitted a December 20, 2018 report from Dr. John Shiau, a Board-certified neurosurgeon, who recommended that appellant engage in home exercises for cervical stretching and strengthening.

In a January 11, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a statement in which she further discussed the incident on December 19, 2018 when she was punched on the head and left ear while attempting to stop two coworkers from fighting. In a December 20, 2018 report, a physician assistant, discussed the December 19, 2018 incident and diagnosed post-concussion syndrome and cervicalgia.⁵

In a January 21, 2019 report, Dr. Steven Lin, an osteopath Board-certified in neurology, discussed the December 19, 2018 employment incident and appellant's reported symptoms. He indicated that appellant had post-concussive syndrome and possibly post-traumatic syndrome. In

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the September 9, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

⁵ The report contains the name of Dr. Glenn Babus, an osteopath Board certified in anesthesiology, in the signature block, but it is not signed by him.

a January 22, 2019 report, Dr. Lin noted that appellant was unable to return to work until her next evaluation on March 4, 2019.

In an authorization for examination and/or treatment form (Form CA-16) completed on January 22, 2019, a physician assistant indicated that appellant was assaulted by a coworker on the job and diagnosed post-concussive syndrome and cervical spasm/pain.

By decision dated February 15, 2019, OWCP accepted the occurrence of the December 19, 2018 employment incident when appellant was hit on the top of her head and on her left ear while attempting to separate two coworkers. However, it denied appellant's claim for a December 19, 2018 traumatic injury, finding that she failed to submit sufficient medical evidence to establish she sustained a diagnosed condition causally related to the accepted December 19, 2018 employment incident.

On April 25, 2019 appellant requested reconsideration of the February 15, 2019 decision. She submitted a December 19, 2018 statement in which she again recounted the December 19, 2018 employment incident.

Appellant submitted a December 19, 2018 emergency room report, which discussed her initial treatment for the December 19, 2018 incident. The report contained a diagnosis of head contusion. In a Form CA-16 report completed on February 12, 2019, Dr. Lin diagnosed post-concussive syndrome, which he indicated was caused by appellant being hit in the head on December 19, 2018.

In an April 15, 2019 report, Dr. Lin indicated that appellant's reported symptoms were consistent with post-concussive syndrome. In a May 1, 2019 report, he diagnosed post-concussive syndrome and cervical radiculopathy, and indicated that appellant was totally disabled from work.

Appellant also submitted March 3, April 4, and June 5, 2019 reports from physician assistants. The reports contain Dr. Lin's name in the signature block, but were not signed by him.

By decision dated July 11 2019, OWCP denied modification of the February 15, 2019 decision.

On June 23, 2020 appellant, through counsel, requested reconsideration of the July 11, 2019 decision. Counsel argued that an attached December 13, 2019 report from Dr. Lin established appellant's claim for a December 19, 2018 employment injury, including a cervical radiculopathy condition.

In his December 13, 2019 report, Dr. Lin indicated that he first saw appellant on January 21, 2019 following a December 19, 2018 work-related accident where appellant was injured trying to break up a fight between coworkers. Appellant reported that she was struck on the left ear, but did not lose consciousness. Dr. Lin noted that she further reported that she developed symptoms of persistent headache, dizziness, neck pain shooting down her arms, trouble sleeping/focusing/concentrating, and worsening depression and anxiety. He advised that appellant developed symptoms of post-concussion syndrome and detailed diagnostic testing obtained to evaluate this condition. Dr. Lin indicated that it was suspected that she had post-traumatic stress disorder as she reported frequent nightmares and a fear of returning to work. He noted that

appellant's complaints of neck pain shooting down her arms were suggestive of cervical radiculopathy and indicated that on examination days appellant had signs of myelopathy including hyperreflexia and positive Hoffman sign. Dr. Lin noted that, despite the physical examination finding of hyperreflexia, a magnetic resonance imaging (MRI) scan of the cervical spine showed no spinal cord involvement. He indicated that the MRI scan showed two new small, mild bulging discs at C5-6 and C7-T1, which were not seen on an MRI scan from 2011. Dr. Lin noted that it was unclear whether the new MRI scan findings were due to the December 19, 2018 accident, but he advised that appellant's "symptoms were causally related since she had not needed any medical therapy for her neck until the accident." He noted that to assess for nerve injury, electromyogram and nerve conduction velocity (EMG/NCV) testing was done on March 22, 2019, which revealed normal results. Dr. Lin indicated that appellant's neck pain and stiffness did not respond to medication. He opined that it was within a reasonable degree of medical certainty that appellant's post-concussive syndrome and cervical radiculopathy were causally related to the "work-related injury that occurred on [December 19, 2018]."

Appellant also submitted August 15 and September 12, 2019 reports from physician assistants. The reports contain Dr. Lin's name in the signature block, but were not signed by him.

By decision dated September 9, 2020, OWCP vacated the July 11, 2019 decision, in part, by accepting that appellant sustained post-concussion syndrome causally related to the accepted December 19, 2018 employment injury. It also affirmed its July 11, 2019 decision, in part, by denying appellant's claim for cervical radiculopathy causally related to the accepted December 19, 2018 employment injury.⁶

By separate decision dated September 9, 2020, OWCP formally accepted that appellant sustained post-concussion syndrome due to the accepted December 19, 2018 employment incident.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁷ The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale

⁶ OWCP noted that Dr. Lin discussed psychiatric conditions "in the history of treatment you have received," but further indicated that Dr. Lin was only qualified to treat conditions within the scope of his practice, *i.e.*, neurology. It did not make a final decision regarding whether appellant sustained a psychiatric condition related to the December 19, 2018 employment injury and this issue is not currently before the Board. *See* 20 C.F.R. § 501.2(c).

⁷ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

The Board has held that when the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.⁹ However, the normal progression of untreated disease cannot be stated to constitute “aggravation” of a condition merely because the performance of normal work duties reveals the underlying condition.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a cervical radiculopathy condition causally related to her accepted December 19, 2018 employment injury.

Appellant submitted a December 13, 2019 report from Dr. Lin who detailed the nature of the December 19, 2018 employment indicated. Dr. Lin advised that appellant’s complaints of neck pain shooting down her arms were suggestive of cervical radiculopathy and noted that on examination days appellant had signs of myelopathy including hyperreflexia and positive Hoffman sign. He noted that, despite the physical examination finding of hyperreflexia, an MRI scan of the cervical spine showed no spinal cord involvement. Dr. Lin indicated that the MRI scan showed two new small, mild bulging discs at C5-6 and C7-T1, which were not seen on an MRI scan from 2011. He noted that it was unclear whether the new MRI scan findings were due to the December 19, 2018 accident, but he advised that appellant’s “symptoms were causally related since she had not needed any medical therapy for her neck until the accident.” Dr. Lin noted that to assess for nerve injury, EMG/NCV testing was done on March 22, 2019, which revealed normal results. He opined that it was within a reasonable degree of medical certainty that appellant’s cervical radiculopathy was causally related to the “work-related injury that occurred on [December 19, 2018].”

The Board finds that, due to its lack of adequate medical rationale on causal relationship, Dr. Lin’s December 13, 2019 report is of limited probative value regarding appellant’s request to expand her accepted conditions to include a cervical radiculopathy condition causally related to her accepted December 19, 2018 employment injury. Dr. Lin did not provide adequate medical rationale explaining how the December 19, 2018 employment incident would have been competent to cause a cervical radiculopathy condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an

⁸ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁹ *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

¹⁰ *Id.*

employment activity could have caused or aggravated a medical condition.¹¹ Accordingly, Dr. Lin's December 13, 2019 report is insufficient to establish appellant's expansion claim.

Appellant submitted reports of Dr. Shiau and additional reports of Dr. Lin, and some of these reports diagnosed cervical radiculopathy and cervicgia. However, these reports are of no probative value regarding appellant's expansion claim because they do not contain an opinion that appellant sustained a cervical radiculopathy condition due to the December 19, 2018 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹² Therefore, these reports are insufficient to establish appellant's expansion claim.

Appellant also submitted December 20, 2018, January 22, March 3, April 4, June 5, August 15, and September 12, 2019 reports from physician assistants. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹³ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed cervical radiculopathy condition and the accepted December 19, 2018 employment injury, she has not met her burden of proof to establish expansion of the acceptance of her claim.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹¹ *M.R.*, Docket No. 19-1954 (issued March 1, 2021); *V.L.*, Docket No. 20-0884 (issued February 12, 2021). *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² *T.H.*, Docket No. 18-0704 (issued September 6, 2018). *See also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹³ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not considered a physician as defined under FECA); *S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

¹⁴ The Board notes that the case record contains Form CA-16 reports completed on January 22 and February 22, 2019. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a cervical radiculopathy condition causally related to her accepted December 19, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board